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Presentment Date: April 14, 2020

Time: 12:00 p.m.

Objections Due: April 14, 2020

Time: 11:00 a.m.

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE’S APPLICATION FOR AN ORDER APPROVING THE
RETENTION OF MONFRINI BITTON KLEIN AS SPECIAL COUNSEL**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the estate of Bernard L. Madoff (together with BLMIS, the “Debtor”), by and through his undersigned counsel, hereby submits this second Application for authority to retain Monfrini Bitton Klein (“MBK”) as special counsel

in Geneva, Switzerland and respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction over this Application under SIPA section 78eee(b) and 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 78eee(b)(3) of SIPA, sections 327(e), 328, 329 and 330 of the Bankruptcy Code, and Fed. R. Bankr. P. 2014.

Background

3. On December 11, 2008, the Securities and Exchange Commission filed a complaint in the United States District Court for the Southern District of New York against Bernard L. Madoff and BLMIS, alleging that Madoff and BLMIS engaged in fraud through the investment advisory activities of BLMIS. *See United States v. Madoff*, No. 08 CV 10791 (S.D.N.Y. 2008).

4. On December 15, 2008, the Honorable Louis L. Stanton of the United States District Court for the Southern District of New York entered an order pursuant to SIPA, which in pertinent part:

- a) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;
- b) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- c) removed the case to this Bankruptcy Court pursuant to section 78eee(b)(4) of SIPA.

5. In connection with his statutory duties, the Trustee commenced an adversary proceeding against Defendant Square One Fund, Ltd. (“Square One”) to avoid and recover

customer property under provisions of SIPA and the Bankruptcy Code on November 29, 2010. *Picard v. Square One Fund, Ltd.*, Adv. Pro. No. 10-04330 (SMB) (Bankr. S.D.N.Y.), ECF No. 1.

6. The Trustee filed an amended complaint against Square One on December 21, 2018. *Picard v. Square One Fund, Ltd.*, Adv. Pro. No. 10-04330 (SMB) (Bankr. S.D.N.Y.), ECF No. 167.

7. On May 29, 2019, the Honorable Stuart M. Bernstein ruled from the bench granting in part and denying in part Square One's motion to dismiss.

8. In connection with the remaining claims against Square One, the Trustee seeks discovery from related third-parties who reside in Geneva, Switzerland. The Trustee seeks the retention of MBK to provide legal services relating to the Trustee's Geneva discovery efforts.

Relief Requested

9. Retention of MBK will assist the Trustee with the Trustee's international discovery efforts in several adversary proceedings, including those against Square One Fund, Ltd. in *Picard v. Square One Fund, Ltd.*, Adv. Pro. No. 10-04330 (SMB) (Bankr. S.D.N.Y.), and UBS entities and Luxalpha SICAV in *Picard v. Luxalpha SICAV*, Adv. Pro. No. 10-04285 (SMB) (Bankr. S.D.N.Y.), and *Picard v. Luxembourg Investment Fund*, Adv. Pro. No. 10-05311 (SMB) (Bankr. S.D.N.Y.).

10. MBK is a Geneva litigation boutique with renowned asset recovery and bankruptcy practices. Mr. Yves Klein, a partner at MBK, and Ms. Antonia Mottironi, a counsel at MBK, have expertise in complex multi-jurisdictional civil and cross-border insolvency proceedings, and in coordinating transnational recovery of assets concealed in Switzerland.

11. While the Trustee has existing special counsel in Zurich, Switzerland, the Trustee needs counsel specifically in Geneva. Geneva and Zurich vary in many ways, including a different official language. Since Geneva is a distinct jurisdiction with different legal

considerations than other jurisdictions in Switzerland, the Trustee requires Geneva-based counsel to assist with Geneva-based discovery.

12. The Trustee submits that the retention of MBK is permissible under section 78eee(b)(3) of SIPA and is in the best interest of the Debtor's estate, customers, and creditors. To the best of the Trustee's knowledge, and except as disclosed in Mr. Klein's declaration of disinterestedness annexed hereto as Exhibit A, the partners of MBK are disinterested pursuant to section 78eee(b)(3) of SIPA and do not hold or represent any interest adverse to the Debtor's estate with respect to the matter for which MBK is to be retained.

13. MBK is willing to act on the Trustee's behalf to render the foregoing professional services and will be compensated at agreed upon rates, listed below, which reflect a reduction of its normal rates by ten percent (10%). Applications for compensation to MBK will be filed with this Court pursuant to applicable statutes, rules, and orders of this Court. MBK's rate information is as follows:

Attorney	Standard Hourly Rates	Discounted Hourly Rates
Yves Klein	CHF750.00	CHF675.00
Partners	CHF600.00	CHF540.00
Counsel	CHF500.00	CHF450.00
Associates	CHF400.00	CHF360.00
Junior Associates	CHF250.00	CHF225.00
Paralegals	CHF150.00	CHF135.00

The Trustee will coordinate efforts between MBK and Baker & Hostetler so that there will be no duplication of efforts.

14. SIPC has no objection to this Application and, pursuant to SIPA section 78eee(b)(3), SIPC specifies that the Trustee should be authorized to retain MBK as special counsel in Geneva, Switzerland.

Notice

15. Notice of this Application will be provided by U.S. Mail or email to (i) all parties included in the Master Service List as defined in the Order Establishing Notice Procedures (ECF No. 4560); (ii) all parties that have filed a notice of appearance in this case; (iii) the SEC; (iv) the IRS; (v) the United States Attorney for the Southern District of New York; and (vi) SIPC, pursuant to the Order Establishing Notice Procedures (ECF No. 4560). The Trustee submits that no other or further notice is required.

WHEREFORE, the Trustee respectfully requests that the Court enter an order substantially in the form of Exhibit B hereto, (a) granting this Application; (b) authorizing the Trustee to employ MBK as special counsel in Geneva, Switzerland for the purposes described herein; and (c) granting the Trustee such other and further relief as is just and proper.

Dated: April 8, 2020
New York, New York

Respectfully submitted,

/s/ Marco Molina

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